

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ROBERT E. HARRINGTON,

Plaintiff,

v.

Case Number 10-13788-BC
Honorable Thomas L. Ludington

ANN ARBOR VA HOSPITAL
and RONAN, DR.,

Defendants.

_____/

**ORDER ADOPTING JUDGE BINDER'S REPORT AND RECOMMENDATION,
GRANTING DEFENDANTS' MOTION TO DISMISS, AND DISMISSING PLAINTIFF'S
COMPLAINT WITH PREJUDICE**

Magistrate Judge Charles E. Binder issued a report and recommendation [Dkt. # 19] on May 23, 2011, recommending that the Court grant Defendants' motion to dismiss [Dkt. # 15]. Any party may serve and file written objections to a report and recommendation "[w]ithin fourteen days after being served with a copy" of the report. 28 U.S.C. § 636(b)(1). The district court will make a "de novo determination of those portions of the report . . . to which objection is made." *Id.* Where, as here, neither party objects to the report and recommendation the Court is not obligated to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149–52 (1985). Nevertheless, the Court has reviewed the record and agrees that Plaintiff's claim is barred by 28 U.S.C. § 2401(b) because he did not file it within six months of the agency's denial, and that Plaintiff has not demonstrated that he is entitled to equitable tolling.

Notably, although Plaintiff did not file an objection to Judge Binder's report and recommendation, he did file a letter requesting that the Court provide him with pro bono counsel. The letter notes that Plaintiff has been ill and unable to secure an attorney to represent him.

Although the Court is sympathetic to Plaintiff's situation, particularly given the harsh consequences imposed by Congress where an administrative claim is not appealed to a district court within six months, *see* 28 U.S.C. § 2401(b), there is no constitutional or statutory right to appointed counsel in a civil case. *See, e.g., Lavado v. Keohane*, 992 F.2d 601, 605–06 (6th Cir. 1993) (“Appointment of counsel in a civil case is not a constitutional right. It is a privilege that is justified only by exceptional circumstances.” (citations and quotations omitted)).

Accordingly, it is **ORDERED** that Judge Binder's report and recommendation [Dkt. # 19] is **ADOPTED**.

It is further **ORDERED** Defendant's motion to dismiss [Dkt. # 15] is **GRANTED**.

It is further **ORDERED** that Plaintiff's complaint is **DISMISSED WITH PREJUDICE**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: June 16, 2011

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and upon Robert E Harrington, at 13080 West Shore Drive, Apt. #3, Houghton Lake, MI 48629-8654 by first class U.S. mail on June 16, 2011.

s/Tracy A. Jacobs
TRACY A. JACOBS